

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Norfolk Division

JOHN JUNIOR WHITE, #329401,

Petitioner,

v.

ACTION NO. 2:05CV292

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of petitioner's constitutional rights pertaining to his convictions in the Circuit Court of the City of Colonial Heights, Virginia, for robbery and unlawful wounding. On December 30, 2003, petitioner was sentenced to a term of forty years (with thirty years suspended) for the robbery, and was further sentenced to a forty-year suspended sentence for the unlawful wounding.

The petition was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. Report of the Magistrate Judge was filed on August 1, 2005, recommending dismissal of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The court has

received no objections to the United States Magistrate Judge's Report and Recommendation and the time for filing same has expired.

The court does hereby accept the findings and recommendations set forth in the report of the United States Magistrate Judge filed August 1, 2005, and it is therefore ORDERED that the petition be DENIED and DISMISSED and that judgment be entered in favor of the respondent.

To the extent that the petition is based on Grounds (a) (I) and (a) (ii), the petition is DISMISSED because these grounds were previously adjudicated by the Virginia Supreme Court on the merits and none of the statutory exceptions apply that would allow this court to review the claims on the merits. To the extent that the petition is based on Ground (b), the petition is DISMISSED because the state court was not bound by the discretionary sentencing guidelines, and failure to follow such guidelines cannot be the basis for any post-conviction relief.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. As petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," the court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See

Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to the petitioner and to counsel of record for the respondent.

/s/Rebecca Beach Smith
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

August 29, 2005